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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,311	10/23/2003	Raymond E. Counsell	66254-5003-US01	8570

43850 7590 09/25/2008
MORGAN, LEWIS & BOCKIUS LLP (SF)
One Market, Spear Street Tower, Suite 2800
San Francisco, CA 94105

EXAMINER

JONES, DAMERON LEVEST

ART UNIT	PAPER NUMBER
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1618

MAIL DATE	DELIVERY MODE
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09/25/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/692,311	Applicant(s) COUNSELL ET AL.	
	Examiner D. L. Jones	Art Unit 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 48,49, 51,54-84,87-120 and 123-146 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 48,49,51,54-84,87-120 and 123-146 is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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ACKNOWLEDGMENTS

1. The Examiner acknowledges receipt of the amendment file 7/28/08 wherein claims 1-47, 50, 52, 53, 85, 86, 121, and 122 were cancel and claims 51, 84, and 120 were amended. In addition, Applicant acknowledges receipt of the request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/28/08 has been entered.

Note: Claims 48, 49, 51, 54-84, 87-120, 123-146.

RESPONSE TO APPLICANT'S AMENDMENT/ARGUMENTS

2. The Applicant's arguments and/or amendment filed 7/28/08 to the rejection of claims 51-82 and 84-146 made by the Examiner under 35 USC 103, 112, and/or double patenting have been fully considered and deemed persuasive-in-part for the reasons set forth below.

Double Patenting Rejection

The rejection over claims 51, 55-68, 70-84, 88, 89, 91-104, 106-120, and 123 on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-6 of US Patent No. 6,645,463 is MAINTAINED for reasons of record in the office action mailed 8/27/07.

112 First Paragraph Rejection

The 112, first paragraph, rejections are WITHDRAWN because the claims have been amended to overcome the rejection.

103 Rejections

The 103 rejections are WITHDRAWN for reasons of record in Applicant's response filed 2/27/08 and the amendment filed 7/28/08.

ALLOWABLE CLAIMS

3. Claims 51, 54-84, 87-120, and 123-146 are allowable over the prior art of record because the prior art neither anticipates nor renders obvious a surface modified lipoprotein-like oil-in-water emulsion as set forth in claims 51, 84, and 120.

REJOINDER PARAGRAPH

4. Claims 51, 54-82, 84, 87-120 and 123-146 are directed to an allowable product. Pursuant to the procedures set forth in MPEP § 821.04(B), claims 48, 49, and 83, directed to the process of making or using an allowable product, previously withdrawn from consideration as a result of a restriction requirement, are hereby rejoined and fully examined for patentability under 37 CFR 1.104.

Because all claims previously withdrawn from consideration under 37 CFR 1.142 have been rejoined, **the restriction requirement as set forth in the Office action mailed on 12/1/04 is hereby withdrawn.** In view of the withdrawal of the restriction requirement as to the rejoined inventions, applicant(s) are advised that if any claim

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presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Note: It is noted that claim 83 depends on product claim 51. Thus, the claim contains the limitations of product claim 51. However, Applicant is respectfully requested to amend the method claims (independent claim 48) to be consistent with the allowed product claims as set forth in the 'Rejoinder Paragraph' as set forth above.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. L. Jones whose telephone number is (571) 272-0617. The examiner can normally be reached on Mon.-Fri., 6:45 a.m. - 3:15 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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/D. L. Jones/
Primary Examiner
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September 17, 2008